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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

W. P.(C) No. 1881 of 2007

Petitioner : Messrs. Maruti Clean Coaland Power Limited

Versus

Respondents : South Eastern Coalfield Limited & others

Post for order on 15th May, 2007.

Sd/-
Satish K. Agnihotri
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

W. P. (C) No. 1881 of 2007

Petitioner		Messrs. Maruti Clean Coaland Power Limited, Through Director, having Administrative, Office at Agarwal Bhawan, Vidya Nagar, Bilaspur, Chhattisgarh.
	Versus	
Respondents	1.	South Eastern Coalfield Limited, Through the Chief General Manager, Gevra Area, District Korba, Chhattisgarh.
	2.	Government of Chhattisgarh, Through the Collector, Korba Chhattisgarh.
	3.	Messrs. Kartikeya Coal Washeries Private Limited, having its Corporate Office at 18, Vasant Enclave, Rao Tularam Marg, New Delhi 110057

WRIT PETITION UNDER ARTICLE 227 OF THE COSTITUTION OF INDIA

SB: Hon'ble Mr. Justice **Satish K. Agnihotri**

Shri B. P. Sharma, Advocate for the petitioner.

Shri P. S. Nair and Shri H. B. Agrawal, Senior Advocates with Shri P. S. Koshy and Shri Pakaj Agrawal, Advocates for the respondent No.1.

Shri Yashwant Singh Thakur, Govt. Advocate for the respondent No.2.

Shri K. N. Bhatt and Shri P. Diwakar, Senior Advocates with Shri Kulbharat and Shri P. R. Patankar, Advocate for the respondent No.3.

ORDER

(Passed on this 15th day of May, 2007)

1. By this petition under Article 227 of the Constitution of India the petitioner impugns the order dated 21.2.2007 (Annexure P/1) passed by the Civil Judge Class-II, Katghora, district- Korba in Civil Suit No. 90-A/2004, wherein and whereby the application of the respondent No.3, filed under Order 1 Rule 10 of the C.P.C. was allowed for impleading the applicant as necessary party in the suit filed by the respondent No.1/plaintiff.

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2. The indisputable facts, in nutshell, are that the respondent No.1/plaintiff filed a suit for declaration and permanent injunction in regard to the land bearing Khasra No. 594, part 611 and 616, total area 37.91, situated at village – Rantija, which was allotted on lease to the petitioner/defendant No.2. The claim of the petitioner for declaration and permanent injunction was based on the facts that under the provisions of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (herein after referred to as 'the Act, 1957'), after notification issued under the provisions of Section 4 and Section 9 of the Act, 1957 the disputed land vested in the Central Government by virtue of the provisions of Section 11 of the Act, 1957 and as such the said land got vested in the plaintiff/Coal Fields/Respondent No.1

3. Thus the suit was filed on 9.12.2004 (Annexure P/2) against the State Government and the petitioner was also impleaded as party because the said land was allotted to the petitioner/defendant No.2 on lease by the State Government.

4. In the pending suit, the newly impleaded defendant No.3/respondent No.3 filed an application under Order 1 Rule 10 of the C.P.C. to implead the respondent No.3 as a party/defendant on the ground that the respondent No.3 has made an application to the State Government for allotment of remaining 13 acres of land from the same Khasra numbers which were involved in the pending suit.

5. Learned Court below after having considered the arguments of learned counsel appearing for the parties came to the conclusion that the respondent No.3 would substantially be affected by the decision in the pending suit.

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6. Shri B. P. Sharma, learned counsel appearing for the petitioner would submit that the respondent No.3, which has filed the application under Order 1 Rule 10, was neither a necessary nor proper party, as it has nothing to do with the land in question in the pending civil suit. The remaining part for which the respondent No.3 has made an application to the State Government for allotment to the respondent No.3 has nothing to do with the subject matter of the suit.

7. Shri P. S. Nair & Shri H. B. Agrawal, learned senior counsel with Shri P. S. Koshy & Shri Pankaj Agrawal, learned counsel appearing for the plaintiff/respondent No.1 would support the case of the petitioner and the plaintiff/respondent No.1 has submitted in its return, as under:-

"2.6 The respondent no. 3 filed an application for impleading as one of the defendant under Order-I, Rule-10 of the Code of Civil Procedure only on the ground that he applied for lease of 13 Acres of land situated at Village-Nawagaon, Tehsil-Pali, District Korba and bearing Khasra No. 850/23 on lease basis from State Government. It is submitted that by mere filing of an application for lease does not confer any right upon the Respondent No.3 which could be enforce in a court of law. However the suit land is a different land situated in different Village-Ratija and therefore the application under Order-I, Rule-10 should have been rejected. However learned Trial Court under grave misconception of facts and circumstances allowed the application of the respondent No.3 by the impugned order."

8. Shri Yashwant Singh Thakur, learned Government Advocate, appearing for the State Government also supported the contention of the plaintiff/respondent No.1 and the petitioner. The State has submitted in it's return, as under:-

"3. In replied filed by the answering respondent before the Trial Court opposing application of respondent No.3 for impleadment, it has been stated by the answering respondent that the land for which the said respondent No.3 has moved an application for allotment bears

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Khasra No. 850/23 whereas the present suit pertains to Khasra No.s 850/30, 850/24, 850/31, 850/27, 850/28 and 850/32 area 37.91 acres situated at village Ratija (Navagaonkhurd). It would thus be clear that the two parcels of lands being different the respondent No.3 had no locus in intervene in the suit and seek his impleadment as defendant.

4.....It is respectfully submitted that the respondent No.3 is not a proper party for the purposes of the lands involved in the suit. It is settled law that any judgment passed in civil suit is binding only upon the parties to the suit, therefore, the respondent No.3 will not be affected in any manner with the result of the suit."

9. Per contra, Shri K. N. Bhatt & Shri P. Diwakar, learned senior counsel with Shri Kulbharat & Shri P. R. Patankar, learned counsel appearing for the respondent No.3, would submit that it is true that a part of the disputed Khasra lands have been allotted to the petitioner and the petitioner has made an application for allotment of the remaining land. In case the remaining land is allotted to the petitioner, in future, the respondent No.3 would substantially be affected. Thus, in order to avoid multiplication of the suit, the respondent No.3 is a proper and necessary party to be impleaded in the suit. He would further submit that the presence of the respondent No.3 would help the Court for proper adjudication of the dispute.

10. I have heard learned counsel appearing for the parties and perused the pleadings and documents, appended thereto.

11. The Court below has completely ignored the fact that the suit was filed with regard to the land allotted to the petitioner only, may be the total area of the land in Khasra No. 594, 611, 666 is 58.65 acres and out of 58.56 acres total area allotted to the petitioner/defendant No.2 was 37.91 acres. The plaintiff/respondent No.1 had sought for declaration and permanent injunction in respect of only 37.91 Acres of

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the land, which was allotted to the petitioner. The relevant clause to that effect in plaint reads as under:-

" प्रतिवादी कमांक 2 कोल वाशरी कंपनी है. प्रतिवादी कंपनी वादभूमि जिसकी विस्तृत जानकारी वाद पत्र में संलग्न मानचित्र में लाल रंग से प्रदर्शित की गयी है. वादभूमि के भीतर ग्राम रतीजा की भूमि खसरा नंबर 594 का भाग 611 का भाग 616 का भाग शामिल है. "

12. The Court below has further ignored the fact that the newly impleaded defendant No.3 was not allotted any land till date. The respondent No.3 itself in it's application (Annexure R-3/2) has requested for allotment of 13 acres of remaining land of Khasra No. 850/23, which, according to the respondent No.3, is new number of the same disputed land, at village Ratija. It is beneficial to quote the application of the respondent No.3, which is as under:-

" प्रति,

श्रीमान जिलाध्यक्ष महोदय,

कोरबा

विषय :– कोलवासरी हेतु भूमि आवंटन हेतु.

महोदय,

विषयान्तर्गत निवेदन है कि

1. मे. कार्तिकेय कोलवाशरी ग्राम रतीजा में कोलवाशरी की स्थापना करना चाहती है.
2. हमें ज्ञात हुआ है कि ग्राम रतीजा में खसरा नंबर 850/23 में 13 एकड भूमि रिक्त है.

अतः महोदय से निवेदन है कि कृपया हमें भू–आबंटन करने का कष्ट करें ताकि उघोग की शीघ्र स्थापना की जा सके. इस हेतु समस्त औपचारिकता पूर्ण करने हेतु हम सहमति देते हैं.

संलग्न–

1. आवेदित जमीन का नक्शा — सही/– अस्पष्ट
2. परियोजना प्रतिवेदन.

प्रतिलिपि –

1. श्रीमान अनुविभागीय अधिकारी, कटघोरा
2. महाप्रबंधक जिला उद्योग केन्द्र कोरबा को आवश्यक कार्यवाही हेतु."

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It is indisputable that the remaining land admeasuring 13 acres which was not the subject matter of the dispute has not yet been allotted to the respondent No.3.

13. The Hon'ble Supreme Court in **Razia Begum v. Sahebzadi Anwar Begum and others** (AIR 1958 SC 886), while considering the question of addition of party in an application under order 1 Rule 10(2) of the C.P.C. held as under:-

> "13 (2) That in a suit relating to property, in order that a person may be added as a party, he should have a direct interest as distinguished from a commercial interest, in the subject-matter of the litigation;"

14. The Hon'ble Supreme Court in **J. J. Lal Pvt. Ltd. and others Vs. M.R.Murali and another** { (2002) 3 SCC 98} has observed that in the case of title between two persons, the presence of third party is neither necessary for the decision of the question involved, nor his presence is necessary to enable the Court effectually and completely to adjudicate upon and settle the questions involved in the proceedings.

15. In the case on hand, the basis question involved is asto whether the property which is allotted to the petitioner in question vests in the respondent No.1 Coal Fields or in the State Government in view of the provisions of the Act, 1957 and after the notification dated 9.11.1986 under the provisions of Section 4 and 9 of the said Act, 1957.

16. Without going into the merits of the case, as the same may prejudice the rights of the parties, I am of the considered opinion that the respondent No.3 is neither a necessary nor proper party for adjudication of the question of law involved in the suit bearing No. 90-A/2004 (South Eastern Coal Fields Ltd. Vs. State of Chhattisgarh & another).

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17. There is apparent error and perversity in the impugned order passed by the Court below and the same deserves to be set aside.

18. In the result, the petition is allowed. The order dated 21.2.2007 (Annexure P/1) passed by the Civil Judge Class-II, Katghora, district-Korba in Civil Suit No. 90-A/2004, is set aside. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur